The effect of what we have said therefore is that we consider the grounds of appeal arising from the amendment of the charge in the case of three appellants and the additional charge in the case of the other one are without substance.

Solicitors: *S. Seenivasagam & Sons; Yeap & Yeap; Raj & Co.*

JATI v. AH PAW

[O.C.J. (McGilligan J.) November 30, 1963]

[Sibu — Binatang High Court Civil Application No. 1 of 1963]

Adoption—Dayak ceremony of adoption, "tembang" —Death of adoptive parent—Claim for compensation for maintenance by legal personal representative.

Ten years ago the defendant gave away his 14 day old child to the plaintiff's father, now deceased. When the child was about 5 months old a "tembang" or Dayak ceremony of adoption was held and the child was taken into the family of the deceased as his own son. Until his death, the plaintiff's father supported and maintained the child. The plaintiff, as legal representative of her father, now claims against the defendant compensation for 9 years' maintenance of the child.

Held: as there was no agreement between the plaintiff's father and the defendant as to the payment of maintenance or any authorisation by the defendant to the plaintiff's father to maintain the child on the understanding that he would be reimbursed by the defendant, the defendant could not be held liable for compensation.

APPLICATION.

Parties in person.

McGilligan J.: The basic facts in this case are clear and undisputed.

About 10 years ago a son, later to be called Abol, was born to the defendant, Ah Paw (or Siong Kang Yin) and his wife. When still very young, no more than 14 days old (his exact age at the time does not matter) he was given away by Ah Paw to Ah Paw's friend, Dato anak Gumah.

Dato, who died in November 1962, was the father of Jati, the plaintiff, who sues as his legal personal representative.

When Abol was about 5 months old a "tembang", or Dayak ceremony of adoption, took place. The adoption was not registered and no certificate was issued; there is therefore no legal adoption. Nevertheless, it is quite clear from the fact of the ceremony and the evidence of all the witness, including the plaintiff, that the intention of the defendant was to give up the boy completely, and the intention of Dato was to take him into his family as his own son; whether this was because of Abol's hare-lip or not is irrelevant. There is no evidence of, and it seems certain there was not, any arrangement or agreement for defendant to contribute in any way to the support of Abol.

Dato was married to Imok when Abol was given to him. About 5 years later Imok died. After the mourning period for her was over Dato married Dujong (or Lujong, as defendant calls her). There is no doubt that from the time Abol was given to Dato until Dato's death Dato completely supported and maintained Abol.

The plaintiff claims, as legal personal representative of Dato, compensation for nine years' maintenance of Abol. The cost of this she estimates at $25 a month, her total claim being for $2,700. It appeared from her evidence that she is anxious to have the custody of Abol, but she has not claimed it in this case (indeed she could not have done so as the legal personal representative of Dato), and the Court is here only concerned with the claim for compensation. To the question whether or not Dato (or now his estate) should receive money as compensation for his maintenance of Abol, the events which happened after Dato's death are irrelevant.

This claim can only succeed, in my judgment, if there had been either

(a) an express or implied agreement between Dato and the defendant that the defendant should pay for, or contribute towards, the support and upkeep of Abol while he (Abol) was being brought up by Dato, or

(b) some authorisation, whether express or to be implied, by the defendant to Dato to spend money (and perhaps labour) and to incur expenses in the bringing up of Abol for food, clothing, shelter and medical treatment, on the understanding that for such expenses and expenditure Dato would be reimbursed by the defendant.

It is quite clear that there was no such agreement, no such authorisation, and no such understanding.

It might be argued that because the defendant, as he is the natural father of Abol and there has been no legal adoption, is under a liability imposed by law (Chapter XXXIII of Cap. 62, the Criminal Procedure Code, of 1948 Revised Edition of the Laws of Sarawak) to support and maintain Abol, and because Dato discharged that liability for him — that is, supported Abol — therefore the defendant is legally bound to compensate Dato (or, now, his estate). This argument is not, however, a sound one. Where one man voluntarily and gratuitously does what another is by law compellable to do, he is not entitled — in the absence of agreement between them — to payment, remuneration, reward or compensation for what he has done, despite the fact that he has relieved that other of a legal obligation.

It really comes to this: there was no agreement or arrangement between Dato and the defendant that the latter should pay or contribute anything in respect of Abol's maintenance after Abol was given to Dato. On the contrary, it is very clear that Dato took Abol as his son, assuming the rights, responsibilities and liabilities of a father, while the defendant gave up Abol completely, gave up (or intended to give

up) his rights, liabilities and responsibilities as a father (though retaining what could not be *taken* away from him, his interest in Abol's welfare). Accordingly, the defendant cannot be held liable to compensate Dato for the maintenance of Abol after Dato had taken Abol to live with him.

The plaintiff's claim is dismissed with costs.

Claim dismissed.

DANA & ANOR. v. SANDOM & ANOR.

[O.C.J. (McGilligan J.) December 2, 1963]

[Sibu — Binatang High Court Civil Suit No. 5 of 1963]

Adoption—Annulment—Special reason—Age of child —Interests of child—Adoption Ordinance (Sarawak Cap. 91), ss. 7 and 8.

This was an application by the adoptive parents for the annulment of the adoption of one R, who is now 20 years old. R had lived with the adoptive parents since he was 5 years old although the adoption was only registered when he was 17. The main ground of the applicants for the annulment was that they wished to adopt another son to help look after them and they could not do so unless the existing adoption was annulled. R himself very emphatically said that he did not want the adoption annulled.

Held: (1) the clear wishes of the adopted child, particularly one of 20 years old, must be given the very greatest respect by the Court in deciding an application for annulment. In this case as R did not want the adoption annulled and as he regarded his adoptive parents as his father and mother and the applicants' home as his home an order of annulment should not be made;

(2) the main ground put forward by the applicants was not a good or meritorious one and did not constitute a "special reason" for annulment.

CIVIL SUIT.

Parties in person.

McGilligan J.: This is an application for the annulment, under section 7 of the Adoption Ordinance, of the adoption of one Rejab anak Sandom. The application is made by the adoptive father and mother, Dana anak Ganyah and Sunah anak Silimbau. The adoption was registered on the 31st of August, 1960.

The thought that immediately occurs to the Court is that it is very late in the day to be seeking annulment of adoption, when the adopted child has reached the age of 20 years. It is only in an exceptional case that annulment would be granted at this stage, and there are here no special reasons for annulment.

In any such case as this, exceptional or not, the basic principle in which the Court must act is that set out in section 8 of the Adoption Ordinance. The section reads as follows:—

"Where there is any question whether the adoption of any child should be effected or annulled the interests of such child shall be the paramount consideration".

Here, the adopted child, Rejap anak Sandom, has lived with the adoptive parents since he was five years old (I accept his undisputed evidence on this), though the adoption was not registered (and was therefore of no legal effect) until he was seventeen.

Rejap's real mother, Empana anak Silimbau, though served with notice of to-day's hearing, has not bothered to appear. Clearly she is not very interested in what happens to him.

His real father, Sandom anak Nyuak, has appeared, and is prepared to have the adoption cancelled and to resume the legal father-son relationship which existed between him and Rejap prior to the adoption. But it is plain that he is not really very anxious to do so, and is prepared to do so only as a matter of duty.

Rejap himself, now aged 20 and a school teacher, has said very emphatically that he does not want the adoption annulled. He said he regards Rumah Munie where the applicants live as his home, and will always look upon the adoptive parents as his father and mother, even if the adoption is annulled. The clear wishes of the adopted child, particularly one of 20 years old, must be given the very greatest respect by the Court in deciding an application for annulment.

Finally there is this, that it does not seem to the Court that the main ground put forward by the applicants for the annulment — that they wish to adopt another son to help look after them and cannot do so unless the existing adoption is annulled — is a good or meritorious one. Apart from this wish to get a new son the adoptive parents have nothing against Rejap, except that he has now gone to live in his school, and does not visit them often enough. This is the sort of complaint many parents have to make about a grown-up son, and is hardly sufficient reason for casting him off.

The Court is quite satisfied that in the circumstances of the case it would be wrong to order annulment of adoption. The application is refused. No order is made as to costs.

Application refused.

UNITED MALAYAN BANKING CORPN. LTD. v. IPOH MINING CO. (M) LTD.

[F.C. (Thomson L.P., Barakbah C.J. (Malaya) and Tan Ah Tah J.) December 5, 1963]

[Ipoh — Federal Court Civil Appeal No. 15 of 1963]

Practice and Procedure—Application under R.S.C. O.14 in respect of money lent and interest—Refusal of judge to enter summary judgment on ground that there was a triable issue—Appeal from order of judge—Appellate court not to interfere unless special circumstances shown.

Where an application under Order 14 is for money lent and interest thereon and the judge refuses to make an order for summary judgment on the ground that